

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: *Wilson Foods, Inc. d/b/a Wilson Candy Company*)
 Personal Property Account No. P093806) Shelby County
 Tax years 2002, 2003)

INITIAL DECISION AND ORDER

Statement of the Case

The Shelby County Board of Equalization ("county board") has valued the subject property for tax purposes as follows:

TAX YEAR	APPRAISAL	ASSESSMENT
2002	\$831,400	\$249,420
2003	\$651,800	\$195,540

Appeals have been filed on behalf of the taxpayer with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on November 29, 2006 in Memphis. The appellant, Wilson Foods, Inc. ("WF") was represented by registered agent Jerry R. Caruthers, of Caruthers & Associates, Inc. (Memphis). Audit Manager Eric Beaupre, CPA and Director of Finance Gwendolyn Cranshaw, CPA appeared on behalf of the Shelby County Assessor of Property. Also in attendance at the hearing was Assistant County Attorney Thomas E. Williams.

The last document constituting part of the record in this case – the taxpayer's reply brief, signed by Fred M. Ridolphi, Jr., Esq., of Farris, Mathews, Branam, Bobango, Hellen & Dunlap, PLC (Memphis) – was postmarked December 19, 2006.¹

Findings of Fact and Conclusions of Law

WF, one of the Kemmons Wilson Companies, was incorporated in this state in November, 1988. Although the corporation remains in existence, its only current asset is a tract of land at 1186 Riverside in Memphis. Doing business as the Wilson Candy Company, WF formerly operated a manufacturing plant at this address. The building was ultimately demolished in 2006.

In tax year 2004, agent Tom Kendrick of Caruthers & Associates timely filed on WF's behalf the tangible personal property schedule required by Tenn. Code Ann. sections 67-5-901

¹Mr. Ridolphi's reply brief was accompanied by a notice of appearance in the case.

et seq. This schedule was accompanied by a letter, signed by an officer of the Kemmons Wilson Companies, declaring that:

...[A]s of December 17, 2003, all assets related to Wilson Candy Company had either been disposed of or abandoned. The inventory for this company has either been sold or destroyed. All supplies have been disposed of as well.

Based on this information, the Assessor's office closed the account assigned to this business.

At issue in these appeals are the assessments that were made on the account in 2002 and 2003. In both of those years, notwithstanding Mr. Kendrick's notations on the schedules that the "plant is idle," the Assessor valued the machinery and equipment on the site at the standard depreciated "cost on file" figures printed on the forms.² Caruthers & Associates made written complaints to the county board, alleging on the petitions: "appraised value excessive, depreciation insufficient." Alas, the county board affirmed the Assessor's values.

Mr. Caruthers upped the ante on the State Board appeal forms, claiming that the subject property should not have been assessed at all. At the hearing, without objection by the Assessor's representatives, the assiduous advocate introduced a touched-up affidavit from WF Assistant Secretary Chip Crenshaw stating that:

The Company ceased operations during 2001.

Sales during 2002 were \$16,714 and in 2003 were \$4,267 all consisting of sales of existing inventories and supplies.

During 2003 all assets were disposed of or abandoned, with proceeds from sale of equipment netting \$400,485.

Franchise & Excise Tax Returns are still being filed because the company owns the land.

The references on the 2002 and 2003 schedules to the "idle" plant, Caruthers resolutely insisted, were intended to show that the Wilson Candy Company was out of business. In his view, the property in question was not used or held for use as of January 1, 2002.

Defending the assessments under attack, Mr. Beaupre emphasized the substantial amounts of depreciation that WF claimed on its 2002 and 2003 federal income tax returns.³ If the company's long-lived assets were truly held for sale in 2001, he maintained, they would have been written down rather than depreciated under generally accepted accounting principles (GAAP). See E. I. DuPont de Nemours & Co. (Hamilton County, Tax Year 2004, Initial Decision and Order, March 18, 2005, Order Denying Petition for Reconsideration, April 13, 2005).

²In tax year 2002, the Assessor did accept the \$0 values reported by the taxpayer under Group 8 (Raw Materials and Supplies). The only "revised cost" total (\$0) entered on the taxpayer's 2003 schedule was in Group 9 (Vehicles).

³Entered on these returns as "gross receipts/sales" were the 2002 and 2003 sales figures (for inventories and supplies) specified in Mr. Crenshaw's affidavit.

Article II, section 28 of the Tennessee Constitution provides that "all property real, personal or mixed shall be subject to taxation" unless exempted by the legislature. Tenn. Code Ann. section 67-5-901(a) provides (in relevant part) that:

For purposes of taxation, all tangible personal property, except inventories of merchandise held by merchants and businesses for sale and exchange by persons taxable under chapter 4, part 7 of this title, and **unused** tangible personal property shall be classified according to its use and assessed as follows:

- ...
- (2) Industrial and commercial property shall be assessed at thirty per cent (30%) of its value...
- (3) ...
 - (B) All tangible personal property that is **not in use** shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of the following:
 - (i) Immediate past use, if any;
 - (ii) Nature of the property;
 - (iii) Classification of the real property upon which it is located;
 - (iv) Normal use of the property;
 - (v) Ownership; and
 - (vi) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

[Emphasis added.]

All entities engaged in the operation of a business or profession in this state must submit annually to the local assessor on the prescribed form a list of all tangible personal property owned or leased and used **or held for use** in such business or profession, excluding finished goods in the hands of the manufacturer and inventories of merchandise held for sale or exchange. Tenn. Code Ann. sections 67-5-903 and 904.

As the party seeking to change the current assessments of the subject property, WF has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

The administrative judge knows of no authority for the proposition that the tangible personal property located in an idle industrial plant is exempt from taxation. Not uncommonly, the owner/operator of such a facility decides that a temporary shutdown would be in the best interest of the business. That is hardly tantamount to going out of business.

In this instance, there was no indication on WF's 2002 or 2003 personal property schedules that its business operations had completely ceased, or that disposition of all its personal property assets had occurred. Hence the Assessor was surely justified in deeming the subject property to be assessable at that time.

It is undisputed even now that WF owned and possessed the property in question on the relevant assessment dates. Nevertheless, Mr. Ridolphi argues, the assessments should be canceled because "the Taxpayer presented proof that the plant was closed in 2001 and further

presented proof that the property was subsequently sold and/or abandoned.” Reply Brief, pp. 1—2.

Yet an assessment of personal property is obviously not invalidated by a post-assessment date transfer or abandonment thereof. Nor does Mr. Crenshaw’s self-serving declaration — after the disposition of this property and the demolition of the building — that WF “ceased operations during 2001” comport with the reality that the company was still carrying on commercial transactions in 2003. That the plant was not actually in production on January 1, 2002 and January 1, 2003 does not negate this fact. Indeed, the franchise and excise tax laws which admittedly still apply to WF were enacted on the express premise that “doing business” in Tennessee is a taxable privilege. Tenn. Code Ann. sections 67-4-2005 and 67-4-2104. It is anomalous to suppose that the property of a for-profit corporate franchise and excise taxpayer could escape ad valorem taxation on the theory that such property is not held for business purposes.

Order

It is, therefore, ORDERED that the subject property be valued as follows:

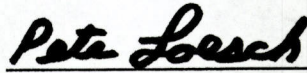
TAX YEAR	APPRAISAL	ASSESSMENT
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Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 9th day of February, 2007.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Fred M. Ridolphi, Jr., Esq., Farris Mathews Branam Bobango Hellen & Dunlap PLC
Jerry Caruthers, of Caruthers & Associates, Inc.
Assistant County Attorney Thomas Williams
Gwendolyn T. Cranshaw, Director of Finance, Shelby County Assessor's Office
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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